U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

File: [redacted] Office: Texas Service Center Date:

IN RE: Petitioner: [redacted]
Beneficiary:

APR 13 2001

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

[redacted]

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a postdoctoral fellow at St. Jude Children's Research Hospital ("St. Jude"). We note that the petitioner received his Ph.D. in August 1998, less than a year before he filed the petition in May 1999.

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Counsel contends that the petitioner received a nationally recognized prize in the form of a visiting fellowship at the Fogarty International Center of the National Institutes of Health ("NIH"). This fellowship consists of a one-year research position and a $27,500 stipend. This fellowship constitutes paid training rather than a prize or award for excellence in the field. Furthermore, a letter from the Fogarty International Center states that the fellowship "will enable [the petitioner] to gain biomedical research experience at the NIH under the sponsorship of Dr. [redacted] Laboratory of Developmental Neurobiology, National Institute of Child Health and Human Development," beginning "on or about August 1, 1998."

Furthermore, the petitioner did not accept this fellowship. As the record amply demonstrates, in August 1998 the petitioner began working not at the National Institutes of Health, but at St. Jude. The petitioner himself states that he declined the fellowship at NIH, preferring to conduct research at St. Jude. Thus, even if this fellowship did represent a major prize or award, there is no evidence of the petitioner's receipt of the fellowship because he refused it.

The only other award which the petitioner claims is a $250 travel grant to defray the cost of traveling to a professional conference in Wisconsin. The petitioner has offered no evidence to show that only the top researchers receive postdoctoral fellowships and nominal travel grants.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner documents his membership in the Society for Cryobiology and the American Association for the Advancement of Science, but the record contains nothing to show that either of

these associations require outstanding achievements of their members.

In response to a request for further evidence, the petitioner submits a letter dated September 24, 1999 (after the petition's filing date) indicating the petitioner's acceptance into the American Society for Biochemistry and Molecular Biology. Documents in the record list three "Regular Membership Criteria":

1. The applicant should normally hold a doctoral degree.
2. The applicant must have published, since the receipt of a doctoral degree, at least one paper in a refereed journal devoted to biochemistry and molecular biology.
3. The applicant must be nominated by one Regular member of the Society.

None of these criteria constitute outstanding achievements.

The petitioner also submits a partial copy of the bylaws of the Society for Cryobiology. According to this document, membership is open to "individuals engaging in or concerned with scientific research in low temperature biology who concur with and support of the objectives and policies of the Society." Employment in the field and agreement with the society's goals are not outstanding achievements.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

Counsel asserts that the petitioner has satisfied this criterion. The only published materials" submitted, however, are articles about antifreeze proteins in general; the petitioner's work, along with the work of dozens of other researchers, is credited in bibliographic footnotes. Citations of this kind are more properly considered as a reflection of the impact of the petitioner's own published work, covered by a separate criterion further below.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner submits several witness letters. Researchers who supervise the petitioner's current work at St. Jude discuss the potential, but as yet unrealized, importance of the petitioner's then-unfinished project, and state that the petitioner's publication record is impressive. Publication is covered under a separate criterion, below; the very act of publication is not a

major contribution. Of greater importance for this present criterion is the impact of the content of those published articles.

Witnesses indicate that the petitioner is the first researcher at St. Jude to utilize certain techniques and procedures, but there is no indication that the petitioner invented these methods; he is simply the first to use them at one particular facility.

Dr. [redacted] director of the Biocore Facility at the University of Notre Dame (where the petitioner obtained his Ph.D.), states:

> [The petitioner] conducted research for the purpose of identifying the structure and function of the antifreeze protein produced by the overwintering beetle larvae Dendroides canadensis. . . . [T]hese antifreeze proteins can be used to protect the membranes, cells and tissues of transplant organs, which are preserved at subzero temperature. . . . The genes of antifreeze protein could also be transferred into other organisms, such as crops to give them cold resistance during winter. . . .
>
> [The petitioner] was the first scientist to isolate the winter beetle protein. . . . He was the first scientist to demonstrate that these proteins exist as multiple species with varying sizes. [The petitioner] demonstrated that the structure of this protein is complicated by the existence of 16 cysteines, every two forming a disulfide bridge that holds this protein into a tightly folded conformation. Mapping out the eight disulfide bridges posed such a daunting technical challenge that other scientists had tried and failed.[1] [The petitioner] undertook this project, and after tremendous effort, he succeeded in unraveling the disulfide linkage pattern within this protein. His work revealed that the eight disulfide bridges make the protein fold into an amphiphilic structure . . . and thus block the water molecule from joining onto the front of the ice lattice. These findings are extremely significant . . . because they represent a well-defined molecular example of how structural characteristics confer antifreezing property in a small molecule. More important, it opened a path to structural based antifreeze protein design, which was not feasible before.

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[1]Given that the petitioner himself had only just discovered these disulfide bridges, it is not clear how many "other scientists had tried and failed" to map them, or how widely distributed (geographically) these other scientists were.

Other current and former Notre Dame faculty members discuss the petitioner's work with antifreeze proteins, in varying degrees of detail.

Professor Sun Ruyong of Beijing Normal University, where the petitioner obtained his master's degree, credits the petitioner with "several important discoveries" such as a process by which a species of vole produces internal heat in its mitochondria (microscopic structures within individual cells).

Only one of the initial witnesses claims no affiliation with institutions where the petitioner has worked or studied. Dr. [redacted], senior research scientist at the University of Illinois at Urbana-Champaign, states that the petitioner's findings with beetle antifreeze proteins "are original and highly significant."

In response to a request for letters from witnesses with no personal connection to the petitioner, the petitioner has submitted two further letters. Professor Arthur L. DeVries of the University of Illinois at Urbana-Champaign has not met the petitioner personally; his closest link to the petitioner is that one of his former students supervised the petitioner's doctoral research at Notre Dame. Prof. DeVries states:

> In my view, [the petitioner] has made three major contributions to antifreeze research:
>
> I. He is responsible for isolating the AFP in the overwintering beetle *Dendroides canadensis*. . . .
>
> II. He determined the structural basis and presented a molecular model that explain the function of these AFPs by mapping the eight disulfide bonds in these antifreeze proteins. . . .
>
> III. Further, [the petitioner] discovered that small organic molecules substantially increase the antifreeze activity when mixed with the antifreeze protein. This discovery has significant impact on potential AFP applications.

Dr. [redacted], scientific review administrator for the NIH, states that the petitioner's "work has enriched our understanding of how antifreeze protein[s] function from a structural perspective. His work is widely cited, identifying him as one of the major scientists in the field." Dr. [redacted] does not define "widely cited"; the petitioner himself establishes only four citations of his published work. Counsel states that Dr. [redacted] does not personally know the petitioner, but Dr. [redacted] makes no such statement.

Counsel concludes that the petitioner "is the preeminent expert in the world, in the area of antifreeze protein molecular structural research." We must note that no one with actual training in that field has so designated the petitioner, and that "antifreeze protein molecular structural research" is not a field of endeavor, but rather a subspecialty within the field of biochemistry. Furthermore, the petitioner himself has stated that his future research interest lies in the study of cancer, rather than antifreeze protein molecular structural research. Thus, if we accept counsel's extremely narrow definition of the petitioner's field, then we must also conclude that he does not seek to continue working in that area as required by section 203(b)(1)(A)(ii) of the Act. Antifreeze proteins appear to have been the petitioner's doctoral research topic rather than his lifetime calling, judging by statements he himself has made in the record, and by the fact that his research at St. Jude has nothing to do with antifreeze proteins.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner has written several published articles in Biochemistry and other journals. Counsel refers to "reviews of other scientists of [the petitioner's] research," but the documentation to which counsel refers consists of anonymous peer review statements. Such peer reviews are commonplace in the scientific community; many journals will not agree to publish an article until other scientists in the field have evaluated the manuscript. Because peer review is commonplace, the fact that the petitioner's work was subjected to such review is unremarkable. The reviewers' comments, while positive, do not consistently indicate that the petitioner's work is of particular significance in the field.

Subsequently, the petitioner has submitted evidence that four articles contain citations of his work. One of these articles indicates that a handful of its 34 cited sources are of "outstanding interest," including an article co-written by the petitioner. This article indicates that several different animal antifreeze proteins have been identified; in addition to the beetle protein isolated by the petitioner, the article lists five proteins found in fish and one found in moths. Another article cites hundreds of source articles; if this article is "about" the petitioner, then it is equally "about" the hundreds of other researchers whose work, like the petitioner's, provided background information for the article.

The director denied the petition, acknowledging that the petitioner has made significant contributions to his specialty but concluding that the evidence of record does not place the petitioner at the

very top of his field. On appeal, counsel reviews the evidence previously submitted but does not contest key findings by the director, such as the finding that none of the associations named requires outstanding contributions. Counsel focuses on the petitioner's original contributions and published articles, which address only two of the regulatory criteria. For reasons discussed above, the evidence of record does not support the petitioner's claims regarding memberships in associations; prizes; or published articles by others about him and his work.

At most, the petitioner has satisfied only two of the ten regulatory criteria, whereas the regulations require satisfaction of at least three in order to establish eligibility, regardless of how much stress counsel places on the two criteria that the petitioner has met. The record portrays the petitioner as a gifted scientist with some noteworthy accomplishments to his credit, but who is nevertheless at a very early stage of his professional career, having finished his degree less than a year before filing the petition. Assertions regarding the promise of the petitioner's career, or the possible yet unrealized applications of his work, do not show that the petitioner is among the most accomplished and renowned figures in his field, as he must be to qualify for this highly restrictive classification.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a biochemist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a biochemist, and has made some important discoveries, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.